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Via Email to: regs.comments@federalreserve.gov

Robert de V. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20551

RE: Enhancements to Federal Reserve Bank Same-Day ACH Service; Docket No. OP-1515

Dear Mr. Frierson:

NACHA—The Electronic Payments Association¹ and the undersigned Regional Payment Association members (“RPAs”) are pleased to provide comments to the Board of Governors of the Federal Reserve System (“Board”) on the proposed enhancements to the Federal Reserve Banks’ current, optional same-day ACH service. We strongly support the proposed enhancements, and the incorporation of NACHA’s recent amendment to the *NACHA Operating Rules* on Same Day ACH into the Reserve Banks’ Operating Circular 4.

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On May 18, 2015, following NACHA’s own public comment period, the NACHA membership approved an amendment to the *NACHA Operating Rules* that provides for Same Day ACH.² The nearly unanimous vote demonstrates the private sector’s broad-based support for Same Day ACH, as the NACHA membership collectively represents nearly 10,000 financial institutions of all types and sizes. The approval of this rule also demonstrates how the private sector can come together and support innovation in a way that allows for investment in new capabilities.

Same Day ACH is a near-term action that can be taken to modernize the payments system and move payments faster in the U.S. In order for Same Day ACH to become a reality, however, the rule needs to be implemented by both the private-sector ACH Operator and the Federal Reserve Banks. Therefore, NACHA and the RPAs strongly support the Federal Reserve Banks’ proposal to adopt the enhanced same-day ACH service by incorporating NACHA’s rule amendment into Operating Circular 4, thereby providing a Same Day ACH capability from both the private-sector ACH Operator and the Federal Reserve Banks. Following, we provide comment on both topics specifically requested by the Board; we note, however, that the two topics are inseparable.

¹ NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data. The ACH Network serves as a safe, secure, reliable network for direct consumer, business, and government payments, and annually facilitates billions of payments such as Direct Deposit and Direct Payment. Utilized by all types of financial institutions, the ACH Network is governed by the *NACHA Operating Rules*, a set of fair and equitable rules that guide risk management and create certainty for all participants. As a not-for-profit association, NACHA represents nearly 10,000 financial institutions via 13 regional payments associations and direct membership. Additional information on NACHA and the ACH Network is available at both www.nacha.org and www.electronicpayments.org.

² See NACHA Membership Approves Same Day ACH at <https://www.nacha.org/news/nacha-membership-approves-same-day-ach>.

A. Mandatory Participation by Receiving Depository Financial Institutions (RDFIs)

The Federal Reserve's experience with its existing, optional FedACH SameDay service provides clear and convincing evidence that a faster payments capability needs to reach all financial institutions in order to offer real value to consumers and businesses that want to move their money faster. As an optional service, FedACH SameDay has drawn only limited interest. Without assured access to all RDFI endpoints, originating depository financial institutions ("ODFIs") are unable to offer the range of products and services that drive the value proposition for Same Day ACH.

By contrast, the NACHA Same Day ACH rule enables a network effect that enhances the value to ACH originators by ensuring that ACH payments can reach all ACH endpoints. An example of the value created by such a network effect is Direct Deposit, which provides value because employers and other payers (including the Federal government) have certainty that they can deposit funds into the accounts of all employees and other recipients, regardless of the financial institutions where they have their accounts. Similarly, a business that wants to send payments faster will see value in adopting same-day ACH services only if the payments can reach accounts at any receiving financial institutions on a same-day schedule; and a business that needs to receive payments faster cannot benefit if the sender does not have access to a same-day capability.

In the ACH Network, the coordination of approximately 12,000 participating financial institutions and two ACH Operators that is required to generate a network effect is addressed through the NACHA rulemaking process. The approval of an amendment to the *NACHA Operating Rules* through the NACHA rulemaking process provides for a defined point in time when all participating depository financial institutions and both ACH Operators adopt a change in practices or functionality simultaneously. This process has worked successfully innumerable times over many decades to bring forth new ACH capabilities, such as check conversion and Internet-initiated ACH payments.

Through a Request for Comment on Same Day ACH,³ NACHA sought feedback from the public on mandatory participation in Same Day ACH by RDFIs. The RFC feedback nearly unanimously supported the need for ubiquity with Same Day ACH. Ninety-six percent of respondents to NACHA's survey agreed that all RDFIs should be required to receive Same Day ACH transactions.

NACHA agrees with the Board that "mandatory participation by RDFIs is critical to the success of a same-day ACH service," and strongly supports the Federal Reserve Banks proposal to adopt the mandatory participation by RDFIs in an enhanced same-day ACH service by incorporating NACHA's rule amendment into Operating Circular 4.

B. Interbank Fee

NACHA's rule on Same Day ACH includes a methodology for a Same Day Entry fee. The fee would be paid from the ODFI to the RDFI for each Same Day ACH transaction, and would be administered by the ACH Operators. Using the approved methodology, the calculated amount of the Same Day Entry fee is 5.2 cents per Same Day ACH transaction.

NACHA and the RPAs strongly support the Federal Reserve Banks' proposal to adopt the Same Day Entry fee in an enhanced same-day ACH service by incorporating NACHA's rule amendment into Operating Circular 4.

³ NACHA's public Request for Comment was issued on December 8, 2014, and was open for comment through February 6, 2015. Comments were specifically solicited from representatives of various ACH user groups. A summary of responses is available at <https://www.nacha.org/rules/same-day-ach-moving-payments-faster>.

As noted above, the Same Day Entry fee is inseparable from mandatory participation by RDFIs. The Same Day Entry fee provides the rational business justification necessary for RDFIs to agree to: 1) make the up-front investments to enable Same Day ACH; and 2) receive Same Day ACH transactions on an ongoing basis, including the requirement for accelerated funds availability for Same Day ACH credits.

In fact, there is clear and convincing evidence that many RDFIs will refuse to participate in a same-day ACH arrangement that does not include the Same Day Entry fee or a substantially similar business justification.

- Many RFI members of NACHA, both large and small, voted against NACHA's previous proposal on same-day ACH processing, in part due to their view that the proposal lacked a sufficient business justification for RDFIs.
- RDFIs have not enrolled in the optional FedACH SameDay service in any significant numbers. The Federal Reserve Banks' same-day fee discount to RDFIs of 0.25 cents per same-day transaction has been insufficient to generate significant interest from RDFIs.
- RDFIs and their representatives responded positively to the inclusion of the Same Day Entry fee in NACHA's public Request for Comment. At the request of the Federal Reserve staff, NACHA specifically requested comment from RDFIs on whether they would support adopting Same Day ACH without the Same Day Entry fee – 57 percent of RFI respondents answered that they would not. Even those RDFIs (and their representatives) that were uncertain about supporting Same Day ACH said that the Same Day Entry fee should be mandatory if the proposal moved forward.
- Most RFI members of NACHA, both large and small, voted in favor of Same Day ACH that includes the now-modified Same Day Entry fee. In order to provide sufficient value to Originators, this Same Day ACH rule includes greater functionality than did NACHA's previous proposal; but greater functionality imposes greater implementation and operational costs on RDFIs. The Same Day Entry fee is necessary to offset those costs.

To the extent that up-front investment and ongoing operating costs are the only costs incurred by RDFIs, then the Same Day Entry fee as adopted in NACHA's Same Day ACH rule equitably reapportions these costs between ODFIs and RDFIs. NACHA's economic analysis of Same Day ACH, conducted by an external, expert economist, determined that the fee amount of 5.2 cents per Same Day ACH transaction will provide, on average, cost recovery for RDFIs for these two areas of costs over an 11.5-year period.⁴

The expert economist also identified a third area of costs that would be incurred by RDFIs – lost revenue that would be experienced to the extent that payments migrated from existing payment methods to a new, Same Day ACH method. Because the decision to use Same Day ACH will be made by ODFIs and their Originators, RDFIs will have no control over these decisions, and therefore will not be able to avoid incurring these opportunity costs. Such opportunity costs are real, and are a normal and standard part of any business' rational decision-making on whether to invest dollars in a new product, service, or facility.

⁴ The Board's Request for Comment specifically inquires only about the equitable apportionment of costs between ODFIs and RDFIs. It is worth noting, however, that the flat per-transaction fee included in the rule also is equitable among RDFIs. As indicated in the text, the Same Day Entry fee was based on a detailed cost study, and is designed to compensate RDFIs based on average RFI costs incurred in supporting Same Day ACH. Some have argued that because some RDFIs have higher costs, the Same Day Entry Fee should be tiered to more fully compensate them for their higher cost structure. Even if a tiered fee structure could be practically implemented and administered by both ACH Operators, it would reward institutions with higher costs and therefore create a disincentive to reduce those costs over time. While this does result in relative benefits to institutions that are better able to reduce costs, through volume-based allocation of per transactions costs or otherwise, it also is consistent with other market and regulatory incentives to improve efficiency, including the Federal Reserve's own volume-based fees.

Nevertheless, in response to the feedback received during the public comment period, the NACHA membership has approved a final Same Day ACH rule in which opportunity costs have been excluded from the methodology for calculating the Same Day Entry Fee.

* * *

The Federal Reserve Banks' adoption of Same Day ACH will have a significant positive longer-run effect on the payments system. A ubiquitous Same Day ACH capability provided by both the private-sector ACH Operator and the Federal Reserve Banks will generate substantial public benefits, as well as private benefits for the consumers, businesses and agencies that want the option to move money faster. NACHA agrees with the Board that the public benefits would be limited if Same Day ACH is not adopted by the Federal Reserve Banks, thereby excluding a significant number of participating depository financial institutions from sending or receiving faster ACH payments.

The Federal Reserve is to be commended for its proposal to support the rule on Same Day ACH that was developed, refined, and approved by the private-sector. The final rule was shaped by ongoing dialogue with the Federal Reserve, and includes a number of changes requested by the Federal Reserve. NACHA believes that the final rule has addressed the comments made by the Federal Reserve, and it was approved by the NACHA membership in good faith and trust that the Federal Reserve will implement the rule as ACH Operator and administer the fee. NACHA cannot state strongly enough our support for the Federal Reserve Banks' proposal to incorporate NACHA's Same Day ACH rule into Operating Circular 4.

Same Day ACH is scheduled to become effective beginning September 23, 2016; in order to successfully implement Same Day ACH by this date, financial institutions need as much advance notice as possible from the Federal Reserve that it is adopting the rule on Same Day ACH. NACHA and the RPAs look forward to soon receiving this confirmation from the Federal Reserve so that Same Day ACH can become a reality.

If you have any questions regarding our comments, please call Michael Herd of NACHA at (703) 561-1100.

Sincerely,

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